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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964.

No. 470

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO,
Petitioner,

vs.

GULFCOAST TRANSIT COMPANY,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit (Petition, Appendix C) is reported at 332 F.2d 28 (1964).

JURISDICTION

Petitioner, National Maritime Union of America ("NMU"), was not a party to the proceedings in the court below. Its motion to intervene, to which the National Labor Relations Board ("NLRB" or "Board") objected, was denied (Appendix a, b, and c). NMU is, therefore, without standing to invoke the jurisdiction of this Court under 28 U.S.C. 1254 (1), which authorizes petitions for writs of certiorari only by *a party* to the proceedings in the lower court. 28 U.S.C. §1254 (1) provides:

> "§1254 . . . Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of *any party* to any civil or criminal case, before or after revelation of judgment or decree; . . ." (Emphasis added)

Section 10 (f) of the National Labor Relations Act, as amended (the "Act") 29 U.S.C. §160 (f), asserted by NMU in its statement of jurisdiction, is inapplicable to Supreme Court jurisdiction.

QUESTIONS PRESENTED

NMU's statement of questions presented contains assertions which are irrelevant and which are not supported by either the record or the conclusions of the Board which NMU seeks to sustain.[1] Accordingly, respondent,

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1. For example, there was no evidence or finding that the defeated union was a "company union" (Petition, Appendix B, page 10a, footnote 2). There were no allegations nor was there any evidence that Gulfcoast "stalemated" negotiations or *caused* a strike (36, 50-55). Gulfcoast did not "ignore" NMU. To the contrary, negotiations continued with NMU long after the alleged unfair labor practices were committed (35, 50).

Gulfcoast Transit Company ("Gulfcoast"), restates the questions as follows:

> (a) Did the court below commit reversible error when it held the Board's findings were not supported by substantial evidence on the record as a whole?
>
> (b) Did the court below commit reversible error when it held the Board's findings that the employer had discussed grievances with the non-certified union within the six-month period prior to the filing of the unfair labor practice charges, were not supported by substantial evidence on the record as a whole?

The following question, like those presented by NMU, does not present reasons why the writ of certiorari should issue. It will, however, be asserted by Gulfcoast if the petition is granted:

> (c) Did NMU lose its right to recognition as the exclusive bargaining representative of Gulfcoast's employees prior to the time of the alleged unfair labor practices when (1) the employees who selected NMU engaged in an economic strike and were lawfully permanently replaced by new employees; (2) the new employees repudiated NMU; and (3) NMU vilified, abused, threatened, and repudiated the new employees who it now claims to represent?

STATEMENT OF THE CASE

Gulfcoast owns and operates the S. S. MARTHA MAC, a bulk cargo carrier engaged primarily in the transport of coal from New Orleans, Louisiana to Tampa, Florida, and bulk phosphates from Tampa to New Orleans (20-22).[2] On February 8, 1960, NMU was certified by the

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2. Unless otherwise indicated parenthetical numbers refer to pages of the joint appendix of the record in the court below.

Board as the collective bargaining representative for the unlicensed employees serving on the MARTHA MAC (34).

On May 5, 1960, after only two negotiating meetings, at which NMU insisted Gulfcoast accept NMU's industry-wide labor agreement (35, 36, 48, 50), NMU called a strike which was conceded to be economic (8, 48, 49). The striking employees were permanently replaced on the day of the strike (134) and the vessel continued to operate (66). The replacements crossed the picket lines established by NMU and were subjected to vile and filthy abuse and threats by NMU (136-138, 190).

In June, 1960, the new crew formed an "opposing association . . . to try to have the ship a better place to live" (86-87). Delegates were chosen from each department and dues were fixed (87-89). Officers were elected and association meetings were held monthly over a period of several months. Eventually, a "Constitution and By-Laws" was adopted and ratified by all employees in the unit (105, 125-126, 179-188).

Contract negotiations between Gulfcoast management and NMU continued through January 24, 1961 (35). On February 9, 1961, following the expiration of NMU's certification year, the association petitioned the NLRB for an election. The election petition came on for hearing on May 16, 1961. On that day NMU filed the unfair labor practice charges on which this case is based, as a "blocking charge", *i.e.*, it "blocked" the election (Petition, Appendix B, page 13a, footnote 3). A complaint was issued and the matter proceeded to hearing.

The Trial Examiner found, and the Board affirmed, that Gulfcoast had engaged in unfair labor practices proscribed by Section 8 (a) (1), (2), and (5) of the Act.

The Board's conclusion was based on findings that Gulfcoast, through the ship's officers, had recognized and dealt with the association. The findings were based on minutes of the association (164-167) which indicated that within the six-month limitations period provided by Section 10 (b) of the Act, 29 U.S.C. §160 (b) (Petition, Appendix A, page 1a), the association had held meetings *of its members* (not with management) and that members of the association had presented certain complaints to the ship's officers (Petition, page 5, footnote 1). The minutes were not supported by any corroborating evidence indicating whether the men who took the complaints to the ship's officers either divulged or represented to the officers in question that they were "presenting grievances" as representatives of the association. In other words, the minutes, if they showed anything, showed only that certain *individuals* reported such things as a broken television set, a broken washing machine and plumbing trouble to some of the officers and inquired as to why a crewman had been fired but the gap between *individual* discussions and discussions as *official representatives* of the association was not bridged by the evidence. Only by going outside the limitations period to the meeting of September 23, 1960 (175-176), was it shown that the officers even knew there was an association. The evidence showed that the ship's mess hall was used by the association for meetings but it did not show that it was *permitted* by management. It likewise showed that the Radio Operator typed certain minutes for the association but it did not show whether he did so with the permission of management or whether he was a supervisor for whose activities the company would be responsible.

On petition to review the order of the Board, the Court of Appeals for the Fifth Circuit ruled that the findings and conclusions of the Board were not supported by substantial evidence on the record as a whole.

ARGUMENT

A. Jurisdiction

NMU asserts that this court has jurisdiction over its petition by virtue of Section 10 (f) of the Act, the pertinent part of which provides:

> "(f) Any person *aggrieved* by a final order of the *Board* granting or denying in whole or in part the relief sought may obtain a review of such order in any *circuit court of appeals* in the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia . . ." (Emphasis added)

This statute does not confer on a party who was *not aggrieved*, by an order of the Board the right to enforce the order. *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U.S. 261 (1939); *National Licorice Co.* v. *NLRB*, 309 U.S. 350 (1939); *Phelps Dodge Corp.* v. *NLRB*, 313 U.S. 177 (1940). Courts of Appeals have generally rejected applications by *successful* charging parties to intervene on petitions by the Board for enforcement, *NLRB* v. *Florida Citrus Canner's Cooperative*, 288 F.2d 630, 639 (5 Cir., 1961), *rev'd on other grounds*, 369 U.S. 404 (1962), and on petitions to review by aggrieved parties *Haleston Drug Stores, Inc.*, v. *NLRB*, 190 F.2d 1022 (9 Cir., 1950); *Aluminum Ore Co.* v. *NLRB*, 131 F.2d 485 (7 Cir., 1942). In *International Union of Mine, Mill, and Smelter Workers* v. *Eagle-Picher Mining and Smelting Co.*, 325 U.S. 335 (1944), this Court entertained a petition for certiorari by a labor union which had been the successful charging

party before the Board, but only because *the petitioning union had been permitted to intervene in the court below and was, therefore, a party to the proceedings in the lower court.*

In the instant case, NMU, apparently aware of the fact that it was not automatically made a party by Section 10 (f) of the Act, moved for leave to intervene (Appendix a). The motion was opposed by the Board (Appendix b). The motion for leave to intervene was denied by the court (Appendix c).

The petition does not challenge the propriety of the order denying intervention.

28 U.S.C. §1254 (1), invoked by NMU in its statement of jurisdiction, provides for the review by this Court of cases in the courts of appeals by writ of certiorari granted only "upon *the petition of any party* to any civil or criminal case . . ." One not a party to the proceedings below is without standing to invoke the jurisdiction of the court on a petition for writ of certiorari. See *Re Leaf Tobacco Board of Trade*, 222 U.S. 578 (1911).

NMU was not a party to the proceedings below. It is, therefore, without standing to invoke the jurisdiction of this Court and the writ for which the petition prays should be denied.

B. Reasons for Denying the Writ

1. The decision of the court below does not "violate the principle established by this Court in Universal Camera Corporation v. NLRB, 340 U.S. 474."

Petitioner's assertion (Petition, page 6) that the decision of the court below "violates the principle established by the court" in *Universal Camera Corporation* v. *NLRB*, 340 U.S. 474 (1950), is without merit.

In that case the Court, construing the Administrative Procedure Act, 5 U.S.C. §1009 (e), and the Labor Management Relations Act (Taft-Hartley Act), 29 U.S.C. §160 (e), established the principle that findings and conclusions of the NLRB are not sacred. The Court first pointed out that prior to its amendment the Wagner Act, 29 U.S.C. §141 *et seq.*, had provided that findings of the NLRB "*if supported by evidence*" would be conclusive and the decisions of the courts had evolved the principle that the requirements of the Wagner Act were met "when the reviewing court could find in the record evidence which, *when viewed in isolation*, substantiated the Board's findings." It was in the face of charges of "judicial abdication" that the requirements that the reviewing court consider whether the findings of the administrative agency are supported by *substantial evidence on the record as a whole* were enacted into both the Administrative Procedure Act and the Taft-Hartley Act. The Court squarely rejected any theory that a reviewing court can look at only one side of the record and if there is substantial evidence to support the findings of the agency affirm without looking at contradictory evidence or evidence from which conflicting inferences could be drawn and held that the *substantiality of evidence must take into account whatever in the record fairly detracts from its weight.* Immediately following that part of the opinion quoted by NMU on page 6 of the petition, the Court said (page 488):

> "Congress had merely made it clear that a reviewing court is not barred from setting aside a Board decision when it cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board's view.
>
> * * *

(page 490:)

> "We conclude, therefore, that the Administrative Procedure Act and the Taft-Hartley Act direct that courts must now assume more responsibility for the reasonableness and fairness of Labor Board decisions than some courts have shown in the past. Reviewing courts must be influenced by a feeling that they are not to abdicate the conventional judicial function. Congress has imposed on them responsibility for assuring that the Board keeps within reasonable grounds. That responsibility is not less real because it is limited to enforcing the requirement that evidence appear substantial when viewed, on the record as a whole, by courts invested with the authority and enjoying the prestige of the Courts of Appeals. The Board's findings are entitled to respect; but they must nonetheless be set aside when the record before a Court of Appeals clearly precludes the Board's decision from being justified by a fair estimate of the worth of the testimony of witnesses or its informed judgment on matters within its special competence or both."

In the present case, the decision of the court below is grounded firmly in the principle quoted above. The court prefaced its review of the evidence by stating the question as follows (Petition, Appendix C, page 34a):

> "The question presented for our decision *is whether substantial evidence, on the record considered as a whole,* supports the Board's findings that, within six months preceding the filing of unfair labor practice charges (after November 16, 1960), the Company failed to bargain with NMU in good faith; bargained and processed grievances with the Association in derogation of NMU's certification rights; and gave unlawful support and assistance to the Association, in violation of Section 8 (a) (5), (2), and (1) of the Act." (Emphasis added)

The court then proceeded to review and evaluate all the evidence and concluded that, considering the whole record, the findings of fact were not supported by substantial evidence. Such a procedure and such a conclusion are completely in accord with the *Universal Camera* standard.[3]

Petitioner seeks to have the Court "re-review" the evidence. Only a casual examination of paragraph I-A of its "Reasons for Granting the Writ" (Petition, pages 7-10), wherein NMU recites its conclusions as "facts" or "evidence", makes this point obvious.

This Court does not issue writs of certiorari merely to review the evidence or the inferences drawn from it. *General Talking Pictures Corp.* v. *Western Electric Company*, 304 U.S. 175 (1937). In *NLRB* v. *Pittsburgh Steamship Company*, 340 U.S. 498 (1951), a companion to the *Universal Camera* case, the Board sought review of an order of the Court of Appeals for the Sixth Circuit which denied enforcement of a Board order. The Court said (page 502):

> "Were we called upon to pass on the Board's conclusions in the first instance or to make an independent review of the review by the Court of Appeals, we might well support the Board's conclusion and reject that of the court below. But Congress has charged the Courts of Appeals and not this Court with the normal and primary responsibility for granting or denying enforcement of Labor Board orders. 'The jurisdiction of the court [of appeals] shall be ex-

3. In *NLRB* v. *Walton Mfg. Co.*, 369 U.S. 404 (1962), cited by NMU on page 7 of the Petition in an attempt to draw a parallel between that case and this one, the lower court was reversed because it applied a *different standard to back-pay cases, viz.* that the declarations of the employer as to reasons for discharge are controlling unless clearly impeached.

clusive and its judgment and decree shall be final, except that the same shall be subject to review . . . by the Supreme Court of the United States upon writ of certiorari. . . .' Taft-Hartley Act §10 (e), 61 Stat. 148, ch. 120, 29 U.S.C. (Supp. Ill.) §160 (e). Certiorari is granted only 'in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal.' Layne & Bowler Corp. v. Western Well Works, 261 U.S. 387, 393, 67 L.ed. 712, 714, 43 S. Ct. 422; Revised Rules of the Supreme Court of the United States, Rule 38 (5). . . ."

"This is not the place to review a conflict of evidence nor to reverse a Court of Appeals because were we in its place we would find the record tilting one way rather than the other, though fair-minded judges could find it tilting either way. It is not for us to invite review by this Court of decisions turning solely on evaluation of testimony where on a conscientious consideration of the entire record a Court of Appeals under the new dispensation finds the Board's order unsubstantiated.

"In such situations we should 'adhere to the usual rule of noninterference where conclusions of Circuit Courts of Appeals depend on appreciation of circumstances which admit of different interpretations.' Federal Trade Com. v. American Tobacco Co., 274 U.S. 543, 544, 71 L.ed. 1193, 1194, 47 S. Ct. 663.

"Affirmed."

The court of appeals patently considered each facet of the evidence and made a fair assessment thereof. NMU now requests this court to violate its rule of "noninterference where conclusions of Circuit Courts of Appeals depend on appreciation of circumstances which admit of

different interpretations." Certiorari should not be granted for such a purpose.

II. The decision of the lower court does not violate the rule laid down by this Court in Local Lodge No. 1424, IAM. v. NLRB, 362 U.S. 411, nor is it in conflict with the decision of the Seventh Circuit in Melville Confections, Inc., v. NLRB, 327 F.2d 689.

NMU contends (Petition, page 11) that the court of appeals refused to consider *for any purpose* evidence of the employer's recognition of and bargaining with the new union prior to November 16, 1960[4] and that in so doing it failed to comply with the principle established in *Local Lodge No. 1424, IAM*, v. *NLRB*, 362 U.S. 411 (1960), that:

> ". . . earlier events may be utilized to shed light on the true character of matters occurring within the limitation period."

At no place in the opinion does the court of appeals state or imply that evidence of events occurring outside the limitation period would not be considered *for any purpose*. To the contrary the court quoted from that part of the *Local No. 1424, IAM*, case which states that Section 10 (b) of the Act does not prevent all use of evidence relating to events transpiring more than six months before the filing and service of an unfair labor practice charge including (Petition, Appendix C, page 35a):

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4. The charges were filed on May 16, 1961. The pertinent part of Section 10 (b) of the Act, 29 U.S.C. §160, provides:

> ". . . Provided, that no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made. . ."

> " 'It is doubtless true that §10(b) does not prevent all use of evidence relating to events transpiring more than six months before the filing and service of an unfair labor practice charge. However, in applying rules of evidence as to the admissibility of past events, due regard for the purposes of §10(b) requires that two different kinds of situations be distinguished. The first is one where occurrences within the six-month limitations period in and of themselves may constitute, as a substantive matter, unfair labor practices. There, earlier events may be utilized to shed light on the true character of matters occurring within the limitations period; and for that purpose §10(b) ordinarily does not bar such evidentiary use of anterior events. *The second situation is that where conduct occurring within the limitations period can be charged to be an unfair labor practice only through reliance on an earlier unfair labor practice.* There the use of the earlier unfair labor practice is not merely "evidentiary," since it does not simply lay bare a putative current unfair labor practice. Rather, *it serves to cloak with illegality that which was otherwise lawful.* And where a complaint based upon that earlier event is time-barred, to permit the event itself to be so used in effect results in reviving a legally defunct unfair labor practice.' " (Emphasis added)

The lower court carefully applied the foregoing principles in its opinion (Petition, page 34a):

> "The 10(b) cut-off-date is November 16, 1960. Therefore, unless there is evidence of unlawful labor practices transpiring after November 16, 1960, which, when considered without the evidence of such practices preceding November 16, 1960, would sustain the findings and conclusions of the trial examiner that petitioner has engaged in unfair labor practices, we must reverse."

It would be hard to word a statement which more squarely fits the *Local No. 1424, IAM*, decision.

The case of *Melville Confections, Inc.*, v. *NLRB*, 327 F.2d 689 (7 Cir., 1964), which NMU contends is in conflict with the decision of the court below is easily distinguished. In that case the employer's profit sharing plan, described in boldface type in a company policies booklet distributed to each employee, limited participation in the plan to those employees who were not members of a labor organization. The court held that this provision was coercive and intimidatory *on its face* and constituted a *per se* violation of Section 8 (a) (1) of the Act. The court stated that it "carried its own *inherent* evidence of [discriminatory] intent . . ." In other words, the day to day presence of the intimidatory language *in and of itself* constituted an offense. Such a situation is readily distinguishable from one where acts occurring within the 10 (b) period are patently lawful and can only be made unlawful by reliance on events occurring outside the 10 (b) period.

In the present case the court, as did this Court in the *Local 1424, IAM*, case, applied the substantial evidence rule and found that events occurring within the 10 (b) period were not violative of the Act. The court declined to go outside the 10 (b) period to "cloak with illegality" that which was otherwise lawful. In the *Melville Confections* case the court found that events occurring within the 10 (b) period were unlawful and that it was not necessary to go outside the period. There is no conflict between the cases.

III. The petition does not present an important question of federal law to be decided by this court.

It has been pointed out above that the important questions of federal law which are raised in the petition have already been settled by this Court in *Universal*

Camera Corporation v. *NLRB*, 340 U.S. 474 (1950) and by *Local 1424, IAM*, v. *NLRB*, 362 U.S. 411 (1960). The decision of the court of appeals expressly recognized the principles established by those cases.

The point that the petition does not present any important questions of federal law is demonstrated by the fact that the National Labor Relations Board, respondent in the court below and guardian of the public interest in cases such as this, did not petition for a writ of certiorari.

Manifestly, NMU is simply attempting to obtain a review of the evidence to vindicate its private rights. Certiorari is granted only "in cases involving principles, the settlement of which is of importance to the public as distinguished from that of the parties and in cases where there is a real and embarrassing conflict of opinion and authority between the courts of appeal." *NLRB* v. *Pittsburgh S. S. Company*, 340 U.S. 498 (1950).

CONCLUSION

Petitioner is without standing to invoke the jurisdiction of this court under 28 U.S.C. 1254 (1) or any other provision of law.

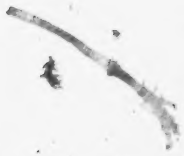
The decision of the court below is not in conflict with a decision of either this Court or a court of appeals, nor does it present an important question of federal law to be decided by this Court.

Therefore, the petition should be denied.

Respectfully submitted,

WARREN E. HALL, JR.,
Counsel of Record for Respondent.
WOFFORD H. STIDHAM,
Of Counsel for Respondent.

APPENDIX



APPENDIX (a)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

GULFCOAST TRANSIT COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

EUGENE N. SOSNOFF, being duly sworn, deposes and says:

I am a member of the firm of Cooper, Ostrin, DeVarco & Ackerman, attorneys for the movant, National Maritime Union of America AFL-CIO (NMU).

This affidavit is submitted in support of the within motion seeking leave for NMU to intervene and take part in these proceedings as a party respondent.

NMU is a national labor organization comprised of approximately 40,000 unlicensed seamen with principal offices in New York City and port offices in major coastal and inland ports throughout the country including Tampa, Florida. NMU represents under collective bargaining agreements the unlicensed crewmembers of over 600 deep sea dry cargo and passenger vessels.

NMU filed the unfair practice charges which resulted in the issuance by the NLRB of a complaint against the

petitioner Gulfcoast Transit Company and thereafter, on January 12, 1962, the remedial order which petitioner has asked to have reviewed on this appeal.

Important interests of NMU are at stake on this appeal including the right of NMU to seek to negotiate a collective bargaining agreement for the unlicensed seamen of the S. S. MARTHA MAC, a vessel owned and operated by petitioner on which the unfair labor practices took place.

NMU participated actively at all stages of the Board litigation including the hearing before a Board Trial Examiner and the subsequent proceedings before the Board itself on exceptions to the Trial Examiner's Intermediate Report and Recommended Order.

WHEREFORE, on the basis of the foregoing, it is respectfully requested that the within motion of NMU for leave to intervene as a party respondent on this appeal be granted.

/s EUGENE N. SOSNOFF.

Sworn to before me this 13 day of February, 1962.

/s Lewis Krasner

Attorney and Counsellor at Law, State of New York
No. 41-2194850

Qualified in Queens County
Term Expires March 30, 1963

APPENDIX (b)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

No. 19,460

GULFCOAST TRANSIT COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

ON PETITION FOR REVIEW AND ON REQUEST FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

Opposition to Motion for Leave to Intervene

To the Honorable, the Judges of the United States Court of Appeals for the Fifth Circuit:

The Board would not object to granting the Union leave to file a brief amicus curiae, but opposes its motion to intervene as a party in the case. The union has urged no special circumstances which would justify a departure here from the customary principles followed by this and other courts of appeals in denying such interventions. See, *e.g., N.L.R.B.* v. *Florida Citrus Canner's Cooperative*, 288 F.2d 630, 639 (C.A. 5), citing *Haleston Drug Stores, Inc.*, v. *N.L.R.B.*, 190 F.2d 1022 (C.A. 9) and *Aluminum Ore Co.* v. *N.L.R.B.*, 131 F.2d 485 (C.A. 7).

These principles were clearly set forth in the *Aluminum Ore* case, *supra*, at 488: "This proceeding is in the

public interest, prosecuted by an authorized agency of the Government, in furtherance of an express policy and intent upon the part of Congress to establish, in behalf of the general public, a standard of conduct presumably productive of progress in the protection of the public welfare. In such proceedings, private parties have no rightful place except as the Court may desire to avail itself of helpful suggestions."

In the interest of orderly procedure and to preserve to the Board its control over litigation involving enforcement of its orders and the development of the law in the field of labor relations, we urge the Court to deny the applicant's motion for leave to intervene.

/s Marcel Mallet-Prevost
Marcel Mallet-Prevost
Assistant General-Counsel
National Labor Relations Board

Dated at Washington, D. C., this 19th day of February, 1962.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

GULFCOAST TRANSIT COMPANY, *Petitioner,* v. NATIONAL LABOR RELATIONS BOARD, *Respondent.*	No. 19,460

Certificate of Service

The undersigned certifies that one copy of the Board's Opposition to Motion for Leave to Intervene in the above captioned case has this day been served by first class mail on the following counsel at the addresses listed below:

Cooper, Ostrin, De Varco & Ackerman
Att: Eugene N. Sosnoff, Esq.
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Wofford H. Stidham, Esq.
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P.O. Box 1068
Bartow, Florida

.....

Marcel Mallet-Prevost
Assistant General-Counsel
National Labor Relations Board

Dated at Washington, D. C., this 19th day of February, 1962.

APPE

IN THE UNITED STAT
FOR THE F

No.

GULFCOAST TR
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v

NATIONAL LABOR
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On Motion for I

Before CAMERON and BE
WELL, District Judge

IT IS ORDERED that
Maritime Union of Americ
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 470.

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO,

Petitioner,

v.

GULFCOAST TRANSIT COMPANY,

Respondent.

REPLY BRIEF IN OPPOSITION.

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REPLY TO BRIEF IN OPPOSITION.

Both respondent, Gulfcoast Transit Company, and the National Labor Relations Board suggest that the National Maritime Union, even though it was the charging party before the Board, does not have standing to petition for a Writ of Certiorari because it was denied the right to intervene before the Court of Appeals. However, in making this argument, they overlooked the fact that under the National Labor Relations Act, 29 U. S. C. §150 et seq., once a Complaint has been issued, the charging party has the right to participate in the action until it is concluded. In *Marine Engineers' Beneficial Association* vs. *NLRB*, 202 F. 2d 546 (3rd Cir. 1953), *cert. den'd.*, 346 U. S. 819 (1953), the Board, *after a complaint had been issued*, attempted to enter into a settlement agreement to which the charging party objected. When the Board went ahead with the settlement,